

ENTERED
ON DOCKET

MAY 29 2003

DEPUTY

FILED
RECEIVED
MAY 23 2003
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VIACOM OUTDOOR, INC , a Delaware
corporation, and A J WEBB and KERRY
WEBB,

Plaintiffs,

v

CLALLAM COUNTY, a Washington
municipal corporation,

Defendant

No C03-5023 RBL

ORDER GRANTING
PLAINTIFFS' MOTION
FOR PARTIAL
SUMMARY JUDGMENT

CV 03-05023 #00000026

This matter comes before the Court on plaintiffs' Motion for Partial Summary Judgment (Dkt #8). The Court has considered the pleadings filed in support of and in opposition to the motion, and the remainder of the file herein.

BACKGROUND

In March of 1993, plaintiff, Viacom Outdoor, Inc , constructed an outdoor commercial sign at mile post 61 on Highway 101 in Sequim Washington. Viacom entered a long-term lease with plaintiffs A J Webb and Kerry Webb, the owners of the property upon which the sign is located. The sign, approximately 288 square feet in area and 25 feet high, was constructed in full compliance with local and state laws.

In June of 2000, Ordinance 694 was enacted by defendant, Clallam County. The ordinance

1 required that all existing signs be reduced to a size no greater than 15 feet in height and 128 square feet in
2 area. The County Sign Code permitted an owner of a non-conforming sign to bring it into compliance
3 after an amortization period. The amortization period for Viacom's sign expired on June 23, 2002. After
4 the expiration of the amortization period, Clallam County issued an Order to Cease and Desist, effectively
5 requiring Viacom to reduce the size of its sign. Viacom appealed the Order to the County Examiner. The
6 County Examiner concluded that the sign was not in compliance with the Sign Code and denied the
7 appeal. The Examiner also found that he had no jurisdiction to determine the issue of compensation and
8 other claims raised by Viacom. Viacom appealed the Examiner's decision in Kitsap County Superior
9 Court with a petition for review pursuant to the Land Use Petition Act (LUPA), RCW 36.70C. Clallam
10 County then removed the matter to this Court.

11 12 SUMMARY JUDGMENT STANDARD

13 Summary judgment is appropriate when, viewing the facts in the light most favorable to the
14 nonmoving party, there is no genuine issue of material fact which would preclude summary judgment as a
15 matter of law. Once the moving party has satisfied its burden, it is entitled to summary judgment if the
16 non-moving party fails to present, by affidavits, depositions, answers to interrogatories, or admissions on
17 file, "specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317,
18 324 (1986). "The mere existence of a scintilla of evidence in support of the non-moving party's position is
19 not sufficient." Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). Factual
20 disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a
21 motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In other
22 words, "summary judgment should be granted where the nonmoving party fails to offer evidence from
23 which a reasonable jury could return a verdict in its favor." Triton Energy, 68 F.3d at 122.

24 25 DISCUSSION

26 The single issue for the Court to decide as a matter of law, as presented by plaintiffs, is whether
27 Clallam County may require the removal of plaintiffs' sign under Ordinance 694 without paying "just
28 compensation" as required by the provisions of the Scenic Vistas Act, RCW 47.42.107. Clallam County

1 substantially agrees with plaintiffs' statement of the issue, but with further clarification regarding
2 "removal." According to the County, the question is whether the Scenic Vistas Act requires the payment
3 of compensation where a local ordinance requires an existing, non-conforming sign to be reduced in size

4 The compensation provision of the Scenic Vistas Act, RCW 47 42 107 provides

5 (1) Just compensation shall be paid upon the removal of any existing sign pursuant to the
6 provisions of any resolution or ordinance of any county, city, or town of the state of
7 Washington by such county, city, or town if

8 (a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the
9 Scenic Vistas Act of 1971), or

10 (b) Such sign was erected subsequent to May 10, 1971 (the effective date of the
11 Scenic Vistas Act of 1971), in compliance with existing state and local law

12 (2) Such compensation shall be paid in the same manner as specified in RCW
13 47 42 102(2) for the following

14 (a) The taking from the owner of such sign, display, or device of all right, title,
15 leasehold, and interest in such sign, display, or device, and

16 (b) The taking from the owner of the real property on which the sign, display, or
17 device is located, of the right to erect and maintain such signs, displays, and
18 devices thereon

19 In this case, compliance with the County's Sign Code and the Cease and Desist Order would
20 require the removal of plaintiffs' existing sign. Regardless of whether plaintiffs are permitted to construct
21 a sign that complies with the new dimensional requirements, the fact remains that the existing sign would
22 first have to be removed, thereby "taking from the owner of the real property the right to maintain such
23 sign." Accordingly, plaintiffs are entitled to just compensation as provided by RCW 47 42 107. The
24 amount of such compensation will be determined through further proceedings in this case.

25 MOTION TO STRIKE

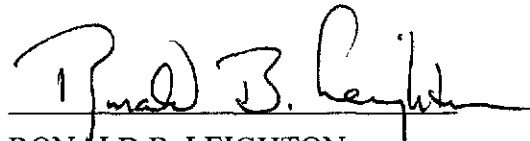
26 Defendant has moved to strike certain factual averments made in the supplemental declaration of
27 Bernard P. Conklin. Specifically, testimony regarding the visibility and functionality of signs, and the
28

1 effect of the Sign Code's Requirements Because the Court did not rely on this information in reaching its
2 decision on this motion, defendant's request is denied
3

4 **CONCLUSION**

5 For all of the foregoing reasons, plaintiffs' Motion for Partial Summary Judgment (Dkt #8) is
6 **GRANTED.** Defendant's Motion to Strike (Dkt #24) is **DENIED**
7

8
9 DATED this 23d day of May, 2003
10

11 
12

13 RONALD B LEIGHTON

14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

car

United States District Court
for the
Western District of Washington
May 29, 2003

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:03-cv-05023

True and correct copies of the attached were mailed by the clerk to the following:

Duncan K Fobes, Esq.
LEE SMART COOK MARTIN & PATTERSON PS INC
STE 1800 ONE CONVENTION PL
701 PIKE ST
SEATTLE, WA 98101-3929
FAX 624-5944

William R Kiendl, Esq.
LEE SMART COOK MARTIN & PATTERSON PS INC
STE 1800 ONE CONVENTION PL
701 PIKE ST
SEATTLE, WA 98101-3929
FAX 624-5944

John E Keegan, Esq.
DAVIS WRIGHT TREMAINE LLP
STE 2600
1501 4TH AVE
SEATTLE, WA 98101-1688
FAX 628-7699

Bruce EH Johnson, Esq
DAVIS WRIGHT TREMAINE LLP
STE 2600
1501 4TH AVE
SEATTLE, WA 98101-1688
FAX 903-3783

Judge Leighton